

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANNY JOE BARBER, III,

Plaintiff,

v.

COUNTY OF KITSAP, *et al.*,

Defendants.

CASE NO. 3:24-cv-05863-KKE-GJL

ORDER DECLINING TO SERVE
COMPLAINT AND GRANTING
SECOND LEAVE TO AMEND

This matter is before the Court on referral from the District Court and on the filing of an Amended Complaint by Plaintiff Danny Joe Barber, III. Dkt. 7. The Court screened Plaintiff's original Complaint under 28 U.S.C. § 1915A, identified deficiencies in the Complaint, and directed Plaintiff to file an amended complaint curing the deficiencies. Dkt. 6. On January 6, 2025, Plaintiff filed an Amended Complaint. Dkt. 7.

The Court has reviewed Plaintiff's Amended Complaint and finds that the Amended Complaint remains deficient. However, the Court will **GRANT** Plaintiff **leave to amend** his Amended Complaint, if possible, to correct the deficiencies identified herein. The Court warns,

1 however, that should Plaintiff fail to cure the deficiencies identified herein with a Second
2 Amended Complaint, the Court **may recommend DISMISSAL** of this action.

3 I. BACKGROUND

4 Plaintiff, a pretrial detainee currently incarcerated at Kitsap County Jail, initiated this
5 civil rights action alleging violations of his constitutional rights by Kitsap County Sheriff's
6 Officers while in custody. Dkt. 7 at 5–6. Plaintiff's Amended Complaint alleges that, from June
7 1, 2024, to December 31, 2024, Plaintiff filed numerous grievances against Kitsap County
8 Sheriff's Officers for civil rights violations, as well as numerous requests to speak with various
9 government entities "regarding sensitive documents [he] was going to turn into the U.S. military
10 prior to my wrongful incarceration." *Id.* at 6. Plaintiff names Kitsap County and the State of
11 Washington as Defendants. *Id.* at 3. As relief, Plaintiff seeks \$1,000,000 for each violation of his
12 civil rights. *Id.* at 7.

13 II. DISCUSSION

14 A. Legal Standard

15 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
16 complaints brought by prisoners seeking relief against a governmental entity or officer or
17 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must "dismiss the
18 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
19 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
20 who is immune from such relief." *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
21 152 F.3d 1193 (9th Cir. 1998).

22 *A pro se* plaintiff's complaint is to be construed liberally, but like any other complaint, it
23 must nevertheless contain factual assertions sufficient to support a facially plausible claim for
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1 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550
2 U.S. 544, 570 (2007)). A claim for relief is facially plausible when “the plaintiff pleads factual
3 content that allows the court to draw the reasonable inference that the defendant is liable for the
4 misconduct alleged.” *Iqbal*, 556 U.S. at 678.

5 Having reviewed the Amended Complaint, the Court notes the following deficiencies.

6 **B. Failure to State a Claim**

7 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
8 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
9 the violation was proximately caused by a person acting under color of state or federal law. *West*
10 *v. Atkins*, 487 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The
11 first step in a § 1983 claim is therefore to identify the specific constitutional right allegedly
12 infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). A plaintiff must provide more than
13 conclusory allegations; he must set forth specific, plausible facts to support his claims. *Ashcroft*
14 *v. Iqbal*, 556 U.S. 662, 678–83 (2009). To satisfy the second prong, a plaintiff must allege facts
15 showing how individually named defendants caused, or personally participated in causing, the
16 harm alleged in the complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v.*
17 *IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

18 In the Amended Complaint, Plaintiff’s allegations again are mere conclusory assertions.
19 Plaintiff cites a timeframe and alludes to situations or events in which his civil rights were
20 allegedly violated, but gives no details as to the violation(s). *See* Dkt. 7 at 5–6. To that point,
21 Plaintiff states “there is so much to report at this time, I’m completely overwhelmed,” but
22 provides no further facts or information. *Id.* at 6.

1 In addition, Plaintiff has named Kitsap County as a Defendant. Dkt. 7. A municipality or
2 other local governmental unit, such as a county or city, may be sued as a “person” under § 1983.
3 *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658, 690–94 (1978). But a municipality cannot
4 be held liable under § 1983 solely because it employs a tortfeasor. *Id.* A plaintiff seeking to
5 impose § 1983 liability on a municipality must therefore identify a “policy” or “custom” of the
6 municipality that caused the alleged injury. *Bd. of the Cnty. Comm’rs of Bryant Cnty., Okla. v.*
7 *Brown*, 520 U.S. 397, 403 (1997) (citing *Monell*, 436 U.S. at 694).

8 Here, in the Amended Complaint, Plaintiff has failed to identify a policy or custom of
9 Kitsap County that has caused his alleged injuries. To pursue a claim against Kitsap County or
10 any other municipality, he must identify a specific policy or custom practiced by that
11 municipality and explain how its application to him violated one or more of his federal
12 constitutional rights.

13 Plaintiff also names the State of Washington as a Defendant. Dkt. 7. Section 1983 applies
14 to the actions of “persons” acting under the color of state law. The State of Washington is not a
15 “person” for purposes of a § 1983 civil rights action, *Will v. Michigan Dep’t. of State Police*, 491
16 U.S. 58, 65, 71 (1989), and cannot be sued under § 1983. Therefore, the State of Washington
17 should not be named as a Defendant in a second amended Complaint.

18 If Plaintiff chooses to file an amended complaint, he must set forth specific, plausible
19 facts to support each of his claims. He must explain how those facts support a violation of his
20 constitutional rights and specify when, where, and how any individual defendant personally
21 participated in causing his alleged injuries. Plaintiff must also ensure that any amended
22 complaint is a concise and organized document. *See* Fed. R. Civ. P. 8(a)(2) and (d)(1) (a
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1 complaint must provide a “short and plain statement of the claim” and “[e]ach allegation must be
2 simple, concise, and direct.”).

3 **C. *Younger* Abstention**

4 In his original Complaint, because of the lack of specificity, the Court was unable to
5 ascertain whether there was an issue arising under the doctrine set forth in *Younger v. Harris*,
6 401 U.S. 37 (1971). *See* Dkt. 6. Here, the claim asserted by Plaintiff in the Amended Complaint
7 appears to relate to evidence involved in his ongoing criminal proceedings. Dkt. 7. Generally,
8 federal courts will not intervene in a pending criminal proceeding absent extraordinary
9 circumstances where the danger of irreparable harm is both great and immediate. *Younger*, 401
10 U.S. at 45, 46. “[O]nly in the most unusual circumstances is a defendant entitled to have federal
11 interposition by way of injunction or habeas corpus until after the jury comes in, judgment has
12 been appealed from and the case concluded in the state courts.” *Drury v. Cox*, 457 F.2d 764,
13 764–65 (9th Cir. 1972) (per curiam). *See also Carden v. Montana*, 626 F.2d 82, 83–84 (9th Cir.
14 1980).

15 Under *Younger*, abstention from interference with pending state judicial proceedings is
16 appropriate when: “(1) there is an ongoing state judicial proceeding; (2) the proceeding
17 implicates important state interests; (3) there is an adequate opportunity in the state proceedings
18 to raise constitutional challenges; and (4) the requested relief seeks to enjoin or has the practical
19 effect of enjoining the ongoing state judicial proceeding.” *Arevalo v. Hennessy*, 882 F.3d 763,
20 765 (9th Cir. 2018) (alterations adopted) (citation and internal quotation marks omitted). Federal
21 courts, however, do not invoke the *Younger* abstention doctrine if there is a “showing of bad
22 faith, harassment, or some other extraordinary circumstance that would make abstention
23 inappropriate.” *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 435
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(1982). Courts may *sua sponte* consider the propriety of a *Younger* abstention. *San Remo Hotel v. City & Cnty. of San Francisco*, 145 F.3d 1095, 1103 (9th Cir. 1998); *see Younger*, 401 U.S. at 40–41.

Here, Plaintiff is a pretrial detainee with ongoing state criminal proceedings, and those proceedings implicate important state interests. *See Kelly v. Robinson*, 479 U.S. 36, 49 (1986); *Younger*, 401 U.S. at 43–44. Plaintiff alleges no facts to support the notion that he somehow is unable to bring his constitutional claim in state court. Finally, it appears that the claim asserted by Plaintiff, if considered here, could effectively enjoin the ongoing state judicial proceeding as it pertains to the validity of the charges currently pending against him. Plaintiff has not identified any extraordinary circumstances that warrant this Court’s intervention in his ongoing criminal proceedings. It thus appears that *Younger* abstention applies to Plaintiff’s claim, and that Plaintiff has therefore failed to state a claim upon which relief may be granted.

D. Leave to Amend

Unless it is absolutely clear that no amendment can cure the defects of a complaint, a *pro se* litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). At this time, the Court finds Plaintiff should be afforded an opportunity to amend his Amended Complaint to attempt to cure the deficiencies identified herein.

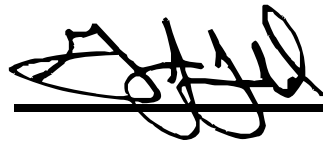
III. CONCLUSION

Because of the deficiencies described above, the Court declines to serve the Amended Complaint or to direct that an answer be filed. Plaintiff is, however, **GRANTED leave to amend** his Amended Complaint, if possible, to correct the identified deficiencies. Within **thirty (30) days** from the date of this Order, Plaintiff may submit a second amended complaint that corrects

1 the deficiencies outlined above. The second amended complaint must be filed under the same
2 case number as this one, and will operate as a complete substitute for, rather than a mere
3 supplement to, the present complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
4 1992). **If no second amended complaint is timely filed, or if Plaintiff files a second amended**
5 **complaint that fails to correct the deficiencies identified herein, the Court may recommend**
6 **that this matter be dismissed.**

7 The Clerk is directed to send a copy of this Court's prisoner civil rights complaint form to
8 Plaintiff, as well as copies of this Order to Plaintiff and to the Honorable Kymberly K. Evanson.

9 Dated this 6th day of February, 2025.

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12 Grady J. Leupold
13 United States Magistrate Judge
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